

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

OXFORD UNIVERSITY BANK

PLAINTIFF

VS.

ADVERSARY NO. 19-01069-SDM

MICHAEL G. HARRIS, II

DEFENDANT/COUNTER-PLAINTIFF/
THIRD PARTY PLAINTIFF

AND

JIM CASSIDY, INDIVIDUALLY, AND
JIM CASSIDY CONSTRUCTION, LLC

THIRD PARTY DEFENDANTS

MEMORANDUM OF LAW IN SUPPORT OF RESPONSE TO MOTION TO DISMISS
COUNTER-CLAIM AND MOTION TO DISMISS CROSS-CLAIM BY OXFORD
UNIVERSITY BANK

THIS DAY the Defendant/Counter-Plaintiff/Third Party Plaintiff has filed his *Response to Motion to Dismiss Counter-Claim and Motion to Dismiss Cross-Claim by Oxford University Bank* and submits the following pleading as his *Memorandum of Law* in support thereof:

FACTS

Oxford University Bank (hereinafter "OUB") commenced this action by filing its *Complaint Objective to Dischargeability of Debt* on December 13, 2019. Docket Entry No. 1. OUB filed its *Amended Complaint* on or about December 30, 2019. Docket Entry No. 4. Mr. Harris filed his *Answer*, which included his

Counterclaim against OUB and a *Third Party Complaint*¹ against the Jim Cassidy Defendants on January 31, 2020.² Docket Entry No. 9. OUB filed its responsive pleading to the *Counterclaim*, which included a request to dismiss the *Third Party Complaint* on February 18, 2020. The Jim Cassidy Defendants filed their responsive pleading on March 2, 2020.

CITATIONS TO LAW AND ARGUMENT³

OUB has requested that the *Third Party Complaint* against the Cassidy Defendants should be stricken/dismissed alleging that Mr. Harris failed to seek this Court's approval prior to commencing his third party action. OUB cites only to F.R.C.P. 14(a)(4) in arguing that Mr. Harris was required to obtain leave of court to file his third party claim, which reads as follows: "Any party may move to strike the third-party claim, to sever it, or to try it separately." F.R.C.P. 14(a)(4) specifies the procedure to be taken when taking issue with a third party claim. However, it does not provide guidance as to when a third party claim is allowed.

¹ See Note 1 to Response filed simultaneously herewith.

² The deadline for Mr. Harris's answer was extended until January 31, 2020 by order of this Court. Docket Entry No. 7.

³ With regard to the request to dismiss the Counter-Claim against OUB, Mr. Harris would show that OUB has not stated any facts upon which should dismissal should be based. Mr. Harris requests that, should OUB seek dismissal of the *Counter-Claim*, it be required to state with specificity the reasons therefore and that Mr. Harris should be allowed an opportunity to respond.

OUB neglects to consider F.R.C.P. 14(a)(1), which states as follows, after clarifying that a defendant may bring a claim against a non-party (a third party claim): “[T]he third-party plaintiff must, by motion, obtain the court’s leave if it files the third-party complaint more than 14 days after serving its original answer.” (Emphasis added by author)

Mr. Harris’s original answer was filed on January 31, 2020, the deadline for the same pursuant to this Court’s previous Order, which contained his *Third Party Complaint* against the Cassidy Defendants. Docket Entry No. 9. Therefore, because Mr. Harris’s *Answer* and *Third Party Complaint* were filed simultaneously, no leave of Court was required and dismissal of the *Third Party Complaint* is not indicated.

CONCLUSION

OUB’s request to dismiss and/or strike the *Third Party Complaint* is not supported by law and, therefore, should be denied as Mr. Harris was not required to seek leave of this Court to file the same.

Respectfully submitted, this the 23rd day of March, 2020.

MICHAEL G. HARRIS, DEFENDANT/
COUNTER-PLAINTIFF/THIRD PARTY
PLAINTIFF

BY: /s/ David E. Rozier, Jr.
David E. Rozier, Jr. (MSB #5712)
Jenessa Carter Hicks (MSB #103287)

Rozier Law Firm, PLLC
2091 Old Taylor Road, Ste. 101
PO Box 2388
Oxford, MS 38655
Telephone: 662-234-0065
Facsimile: 662-234-3007

CERTIFICATE OF SERVICE

I, the undersigned, one of the attorneys for Michael G. Harris, II, do hereby certify that I have this day filed the foregoing pleading which sent notice of filing to the following:

Jeffrey A. Levingston
Trustee

William F. Schneller
Counsel for OUB

Larry O. Lewis
Counsel for the Jim Cassidy Defendants

United States Trustee

This the 23rd day of March, 2020.

/s/ David E. Rozier, Jr.